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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STANFORD HOSPITAL & CLINICS and LUCILE PACKARD CHILDREN'S HOSPITAL,) No. C-07-5158-MMC
Petitioners,) DECLARATION IN SUPPORT OF
v.) LOCAL 715's OPPOSITION TO
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 715) MOTION FOR CHANGE OF INTRA-
Respondent.) DISTRICT ASSIGNMENT
) [CIVIL L.R. 3-2]
) Judge: Hon. Maxine M. Chesney

I, Bruce A. Harland, hereby declare:

1. I am an associate in the law firm of Weinberg, Roger and Rosenfeld, and am one of the attorneys representing Respondent, Service Employees International Union, Local 715 in the above-entitled case. I make this declaration upon my personal knowledge, and, if called as a witness, I could competently testify to the facts hereinafter stated.

2. Attached hereto and marked as Exhibit A is a true and correct copy of a letter dated January 2, 2008 from Vincent Harrington, Jr. to Scott Powers Inciardi, attaching suggested inclusions/rewrites of portions of the Joint Case Management Conference Statement drafted by Petitioners' counsel.

1 I declare under penalty of perjury under the laws of the United States of America and the
2 State of California that the foregoing is true and correct. Executed this 23rd day of January 2008
3 in Alameda, California.

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6 BRUCE A. HARLAND

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January 2, 2008

EMAIL ATTACHMENT

Scott Powers Inciardi
Foley & Lardner LLP
One Maritime Plaza, Suite 600
San Francisco, CA 94111

Re: *Stanford Hospital & Clinics and Lucile Packard Children's Hospital*
v. Service Employees International Union, Local 715
U.S. District Court, Northern District, Case No. C-07-5158-MMC

Dear Mr. Inciardi:

The attachment contains suggested inclusions/rewrites of portions of the Joint Case Management Conference Statement which you earlier sent to me. Please include my changes in the appropriate location. If you need to discuss these matters with me at any time, please do not hesitate to contact me.

Sincerely,



Vincent A. Harrington, Jr.

VAH/map
opeiu 3 afl-cio(1)
Attachment
117443/479673

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STANFORD HOSPITAL & CLINICS and
LUCILE PACKARD CHILDREN'S
HOSPITAL

Petitioners,

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 715

Respondent.

Case No: C-07-5158-MMC

JOINT CASE MANAGEMENT
CONFERENCE STATEMENT

Judge: Hon. Maxine M. Chesney

Pursuant to Local Rule 16-9 and the Court's "Standing Order For All Judges Of The Northern District Of California; Contents Of Joint Case Management Statement" (the "Standing Order"), Petitioners Stanford Hospital & Clinics and Lucile Packard Children's Hospital (the "Hospitals") and Respondent Service Employees International Union, Local 715 (the "Union") respectfully submit their Joint Case Management Conference Statement.

I. JURISDICTION AND SERVICE

The Court has personal jurisdiction by virtue of, Section 301 of the Labor-Management

1 Relations Act of 1947 (hereinafter "Section 301"). 29 U.S.C. § 185. The Petition was served on
2 the Union by personal service on October 18, 2007.

3 **II. FACTS**

4 The Hospitals and the Union (sometimes collectively referred to as the "Parties") are
5 signatory to a collective bargaining agreement (the "Agreement") effective between January 20,
6 2006 through November 4, 2008. The Agreement covers certain classifications of the Hospitals'
7 employees, including the job classification known as "Anesthesia Tech" ("Tech"). The
8 Agreement sets forth a procedure for processing and adjusting grievances culminating in
9 arbitration.

10 The Agreement contains provisions pertaining to the jurisdiction and powers of
11 arbitrators to hear and decide grievances. Article 26.1.1 defines a "grievance" as "a claim during
12 the term of this Agreement that the Employer has violated this Agreement . . ." Article 26.7.3 of
13 the Agreement provides that, in the event that a grievance is taken to arbitration, "[t]he
14 arbitrator's authority will be limited to interpreting the specific provisions of this Agreement and
15 will have no power to add to, subtract from, or to change any part of the terms or conditions of
16 this Agreement." Article 26.7.10 further provides that "[t]he arbitrator's authority will be limited
17 to determining whether the Employer has violated the provision(s) of this Agreement. The
18 arbitrator will not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in
19 any way the provisions of this Agreement, and will not make any award that would, in effect,
20 grant the Union or the employee(s) any matters that were not obtained in the negotiation
21 process."

22 Article 2 of the Agreement sets forth certain "management rights" reserved to the
23 Hospitals under the Agreement. Among the rights specifically reserved to the Hospitals by
24 Article 2 are the rights to "direct and assign the work force," "to abolish, create, alter or combine
25 job classifications," "to introduce new or improved equipment, facilities or operations," and "to
26 determine whether employees, both within and without the bargaining unit, will or will not
27 perform certain functions, duties or tasks." Article 2 further states that the Hospitals "may, in its
28

1 discretion, continue any current policies and practices which do not conflict with express written
2 provisions of this Agreement.”

3 9. Article 18 of the Agreement sets forth provisions governing “work rules” and
4 states, in part, that “[t]he Employer has the right at its discretion to promulgate, alter, modify,
5 amend, rescind, and enforce work rules which are not inconsistent with this Agreement.” Article
6 18 defines “work rules” as “rules promulgated by the Employer, or a particular department or
7 departments thereof, within its discretion, that regulate employees relative to and affecting their
8 employment.”

9 10. Article 28 of the Agreement is titled “waiver” and states in relevant part that
10 “[t]he Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly
11 waives the right, and each agrees that the other will not be obligated to bargain collectively with
12 respect to any subject or matter referred to, or covered in this Agreement, or with respect to any
13 subject or matter not specifically referred to or covered by this Agreement, even though such
14 subject or matter may not have been within the knowledge or contemplation of either or both of
15 the parties at the time they negotiated or signed the Agreement.”

16 11. Article 9 of the Agreement, titled “temporary assignment,” governs the conditions
17 under which employees covered by the Agreement may become entitled to premium payments
18 known as “relief in higher classification” or “RHC” pay. Article 9 states in relevant part:

19
20 An employee temporarily assigned by the Employer to perform the
21 typical duties of a position in a higher pay grade for four (4)
22 consecutive hours or more will receive a differential of five percent
23 (5%) for each grade above the grade of the employee’s regular
24 classification for all hours during which the employee is so
25 assigned (e.g., if an employee in Grade SEIU0006 is assigned to a
26 position in SEIU0008 the employee will receive a differential of
27 ten percent (10%)). As an exception if an employee is assigned by
28 the Employer to a position in a lead classification listed in
Appendix A and to perform all of the duties thereof, the employee
will be paid a lead premium of five percent (5%) for the actual
hours worked in the lead position provided the lead position is in a
classification in a higher wage range than the employee’s regular
classification or position.

On or around April 25, 2006, the Union filed a grievance (the "Grievance") alleging that the Hospitals violated Article 9 of the Agreement by refusing to pay RHC pay to techs who carried a "Spectralink" telephone ("Spectralink") in the Main Operating Room ("Main O.R.") of the Hospitals. The Grievance was submitted to Paul D. Staudohar (the "Arbitrator") for arbitration.

In post-hearing briefs to the Arbitrator, the Union and the Employer each argued the applicability of these contract clauses, and the presence or absence of a "binding past practice" arising out of the implementation of Article 9.

The Arbitrator issued a "Decision and Award" (the "Award") on July 2, 2007. ~~In the Award, the Arbitrator found that there existed for some period of time a "past practice" of paying a five percent "differential wage" to anesthesia techs who carried a Spectralink, but that in early 2006, Stanford determined that such payments were not authorized by the Agreement, and, without securing the Union's "consent or approval," announced that it was discontinuing such payments in February, 2006.~~ In the Award the Arbitrator found that there had existed for some time under the prior Agreement a "past practice" of paying a five percent "differential wage" to Anesthesia Techs who carried the Spectralink, and that this practice continued for a period of time under the new Agreement. The Arbitrator concluded, based on the undisputed evidence, that in early 2006 Stanford ended the payment of the Spectralink differential, purportedly because such payments were not authorized by the Agreement, but without securing the Union's "consent or approval." The Arbitrator concluded that, "the Employer violated Article 9 of the collective bargaining agreement when it terminated the five percent differential to Anesthesia Techs who were assigned to carry the Spectralink telephone on shifts in the Main Operating Room. The remedy is restoration of the five percent differential and making whole of [anesthesia techs] in the Main Operating Room for lost wages. The differential will remain in effect unless and until altered by mutual agreement of the Parties."

III. LEGAL ISSUES

The legal issue is whether the Award must be vacated under Section 301 of the Labor

1 Management Relations Act because it is invalid in that it fails to draw its essence from the
 2 Agreement and/or does not represent a plausible interpretation of the Agreement. The Hospitals
 3 contend that the Award is invalid in the following respects:

4 1) The Award ignores, modifies, and/or contradicts multiple provisions of the
 5 Agreement, including Articles 2, 9, 18, 26, and 28;

6 2) The Award decided issues that were not submitted to the Arbitrator;

7 3) The Award decided issues that were not arbitrable under the Agreement.

8 The Union contends that the Award is valid and enforceable because it draws its essence
 9 from the Agreement, represents a plausible interpretation of the Agreement, and resolves issues
 10 expressly submitted for decision by the parties, or questions reasonably determined as necessary
 11 by the Arbitrator to decide the question submitted. Further, the Union contends that the petition
 12 to vacate the arbitration award is untimely because it was not filed and served on the Union
 13 within 100 days of the date of the service of a signed copy of the Award on the Employer as
 14 required by California C.C.P. § 1288(a). Alternatively, the Union contends the petition to vacate
 15 is untimely under the Federal Arbitration Act (9 U.S.C. § 12), should it be argued to apply,
 16 because the notice of motion to vacate the award was not served upon either the Union or the
 17 attorney for the Union “within 3 months” after the Award was filed or delivered.

18 **IV. MOTIONS**

19 No motions have been filed in the case to date. The Parties expect that a dispositive
 20 motion (or motions) will be filed in the near future seeking adjudication of all material issues in
 21 the case.

22 **V. AMENDMENT OF PLEADINGS**

23 The Hospitals do not anticipate amending any of its pleadings, but reserve the right to do
 24 so. The Parties propose a deadline for amending the pleadings of ~~June 1, 2008~~ February 15,
 25 2008.

26 **VI. EVIDENCE PRESERVATION**

27 The evidence relevant to the issues in this case is expected to be limited to the
 28

1 Agreement, the Award, and the transcripts, exhibits, and briefs filed in connection with the
2 arbitration proceedings and the pleadings and other documents on file in this matter. The Parties
3 have taken all necessary steps to preserve this evidence.

4 **VII. DISCLOSURES**

5 Under Federal Rule of Procedure 26(a)(1)(E), this action is exempt from the requirement
6 of Rule 26(a) disclosures. The Parties have made arrangements for an informal exchange of
7 documents and information (see "Discovery" below).

8 **VIII. DISCOVERY**

9 The Parties have not conducted any discovery to date. The Parties believe and anticipate
10 that all the evidence that will be relied upon in the case is already in the possession of the parties
11 or can be exchanged informally without the need for formal discovery. The Parties have made
12 arrangements for the informal exchange of evidence to the extent that either party contends that
13 it is not in possession of relevant evidence.

14 **IX. CLASS ACTIONS**

15 Neither party has asserted any claims or defenses on behalf of a class.

16 **X. RELATED CASES**

17 The Parties are not aware of any related cases or proceedings pending before another
18 judge of this court, or before another court or administrative body.

19 **XI. RELIEF**

20 The Hospitals seek an order by this Court vacating the Award and directing the
21 submission of the Grievance to a new arbitrator to be selected by the Parties under the
22 procedures set forth in the Agreement, that the Court award the Hospitals' costs, and such other
23 and further relief that the Court may deem proper.

24 The Union seeks an order by this Court denying the Petition to Vacate, and entering a
25 new and different order confirming the Award, attorneys fees and costs incurred on the ground
26 that the Petition is submitted in bad faith and is meritless, and such other and such other and
27 further relief that appears just and proper under the circumstances.

XII. SETTLEMENT AND ADR

The Parties believe that settlement of the case is unlikely at this point. The Parties have not engaged in any ADR efforts to date, and do not believe that such efforts would be helpful at this stage, as the case is likely to be resolved by motion. In the event that the parties are required to select an ADR procedure, the Union is agreeable to Early Neutral Evaluation.

XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

The Parties do not consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

XIV. OTHER REFERENCES

The Parties do not believe that the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

XV. NARROWING OF ISSUES

The Parties believe that all the factual and legal issues in the case can be resolved by motion.

XVI. EXPEDITED SCHEDULE

As the case is likely to be resolved through a motion, the Parties do not believe that it is necessary to establish an expedited schedule.

XVII. SCHEDULING

The Parties believe that this case will be resolved by a dispositive motion, and propose that the determination of dates for designation of experts, discovery cutoff, and pretrial conference and trial be postponed until after the resolution of such motion, if necessary.

XVIII. TRIAL

Neither party has requested a jury trial. While the Parties believe it is very unlikely that a trial will be necessary in this case, in the event that a trial becomes necessary, the Parties expect the trial to last one (1) to two (2) days.

XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

The Hospitals have filed a "Certification Of Interested Entities Or Persons" with the

1 Court. Additionally, in accordance with the Court's Standing Order, counsel for the Hospitals
 2 certifies as follows:

3 The following listed persons, associations of persons, firms,
 4 partnerships, corporations (including parent corporations) or other
 5 entities (i) have a financial interest in the subject matter in
 6 controversy or in a party to the proceeding, or (ii) have a non-
 financial interest in that subject matter or in a party that could be
 substantially affected by the outcome of this proceeding:

- 7 • Paul D. Staudohar, served as arbitrator in the arbitration at
 8 issue in this proceeding, and therefore may have a non-financial
 9 interest in the subject matter that could be substantially affected by
 the outcome of this proceeding.

10 The Union has not filed a "Certification Of Interested Entities Or Persons" with the
 11 Court. Additionally, in accordance with the Court's Standing Order, counsel for the Union
 12 certifies as follows:

13 The following listed persons, associations of persons, firms, partnerships, corporations
 14 (including parent corporations) or other entities (i) have a financial interest in the subject matter
 15 in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject
 16 matter or in a party that could be substantially affected by the outcome of this proceeding:

17 [INSERT] Bargaining unit employees who may be entitled to the benefits of the
 18 Arbitrator's award reinstating the five percent differential, and making affected employees whole
 19 for any lost wages arising from the employer's elimination of the differential are potential
 20 interested persons affected by the outcome of this proceeding. The specific identities of those
 21 employees are presently not known to counsel for the Union.

22 **XX.OTHER MATTERS**

23 [INSERT (IF NECESSARY)]

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1 Dated: January __, 2008

FOLEY & LARDNER LLP
LAURENCE R. ARNOLD
SCOTT P. INCIARDI

2
3
4 By: _____
5 LAURENCE R. ARNOLD
6 Attorneys for Petitioners
7 Stanford Hospital & Clinics and Lucile
8 Packard Children's Hospital

9
10 Dated: January __, 2008

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VINCENT A. HARRINGTON, JR.

11 By: _____
12 VINCENT A. HARRINGTON, JR.
13 Attorneys for Respondent
14 Service Employees International Union,
15 Local 715
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